

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DIAUNTE J. SHIELDS,

Petitioner,

ORDER

v.

11-cv-361-wmc

CAROL HOLINKA, Warden,
Federal Correctional Institution,
Oxford, Wisconsin,

Respondent.

In an order entered on February 3, 2012 order, petitioner Diaunte Shields was allowed to proceed *in forma pauperis* on appeal and was assessed an initial partial payment of the \$455 appeal filing fee in the amount of \$31.23. Now, petitioner has filed a letter that I construe as motion requesting clarification of the February 3 order. In his letter, petitioner states that because he was found eligible for indigent status, it was his understanding that he would not owe a fee for filing his notice of appeal. In addition, petitioner states that although he is able to pay the assessed initial partial appeal fee, the remainder of the fee, or \$424.77, will be a harder to pay because funds in the future are never promised.

As Judge Conley explained to petitioner in a January 27, 2012 order, petitioner's appeal is not subject to the 1996 Prison Litigation Reform Act. However this court has adopted the PLRA's formula for determining indigence for all institutionalized persons, even when the PLRA does not apply of its own force. *Longbehn v. Reno*, 27 F.Supp. 2d 1162, 1164-65 (W. D. Wis. 1998). An initial partial payment of \$31.23 was correctly calculated as the portion of the \$455 appeal filing fee petitioner will have to pay as a condition of proceeding *in forma pauperis*. Although petitioner is responsible for paying the remaining balance of the appeal filing fee, he may pay the remainder when he can afford to do so. Because the time for petitioner to pay the

\$31.23 portion of the filing fee expires on February 28, 2012, I will extend the deadline within which he is to submit his check or money order until March 13, 2012.

ORDER

IT IS ORDERED that petitioner Diaunte Shields's motion for clarification of the February 3, 2012 order is GRANTED in part. Petitioner must prepay \$31.23 of the \$455 appeal filing fee as a condition of proceeding *in forma pauperis* on appeal. Petitioner may have an extension of time to March 21, 2012, in which to submit a check or money order made payable to the clerk of court in the amount of \$31.23. If, by March 21, 2012, petitioner fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Entered this 22nd day of February, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge